

Dear FCC,

I am the President of the Payphone Association of Ohio. These comments are being presented on behalf of our membership. The supporting documents were not available in an electronic format at the time these comments were prepared. They will be forwarded to the Commission under separate cover.

We the members of the Payphone Association of Ohio "PAO" want to stress our support of the IPTA's position in Docket No 04-2487. The payphone orders that were established within 96-128, attempt to balance the competitive payphone environment. On April 15, 1997, pursuant to an RBOC generated request for additional time, the FCC issued a waiver order that in part acknowledged that certain RBOC's had not complied with the NST requirements, but also firmly ordered the RBOC's to comply and issue reimbursements "once the new intrastate tariffs are effective". The concept within the waiver order is clear, and its intent obvious, the April 15th, 1997 effective date for intra-state rates that complied with the NST is to be maintained regardless of when the intra-state tariffs are ultimately approved.

In this case, as in Ohio many years have passed and the State Commissions have cautiously dealt with the arguments of SBC. In Ohio, SBC claimed without any proof that its rates were NST compliant, and the resulting evidentiary hearing has still not been concluded. In Illinois, SBC indicated that an agreement took precedence, and simply ignored their obligations. In both cases the process simply took much longer than was anticipated.

The ICC has erred by failing to order reimbursements. The filed rate doctrine should not be considered for several reasons. The first of which includes the fact that the act specifically indicates that any state law that interferes with the "1996 ACT", is preempted. Second, SBC and SBC alone decided that it was not required to file NST compliant rates in Illinois and in Ohio SBC did not make a sincere attempt, they simply relied upon the FCC's waiver order. SBC was well aware that NST pricing obligations were a pre-requisite of their eligibility to collect dial around income. SBC has collected millions of dollars after falsely reporting to the Commissions and the FCC, that its Tariffs were NST compliant. Ohio's Commission is also opposed to ordering refunds, citing the filed rate doctrine as argued by SBC. In Ohio, SBC's regulatory affairs group issued a statement whereby they indicate their reliance on the Waiver Order and overtly assure Ohio's Commission that refunds will be issued. It now appears that SBC has had a change of heart, and now takes the position that ordering refunds is a violation of law, tantamount to retroactive ratemaking. We are certain that Ameritech Ohio relied on the waiver letter, and that they understood the pricing obligations under the NST, yet their actions were disingenuous and deceptive.

Some of the important questions to be asked include:

Was Ameritech aware they were required to file revised rates that were NST Compliant?

Documents filed in Ohio clearly indicate that Ameritech's regulatory affairs group was both aware of their requirements and relied on the waiver order. No revised tariffs were filed, and NST compliance was claimed, but not proven. A final order is pending.

Did Ameritech rely on the Waiver Order of April 15, 1997?

Documents filed in Ohio clearly indicate a reliance on the Waiver Order, and that Ameritech further agreed to abide by its terms for any changes that resulted.

Even if Ameritech did not rely on the waiver order, does their failure to file revised tariffs or to comply with the FCC orders excuse them from the mandated effective date?

To accept this argument would be tantamount to having state law be pre-emptive to the act. If a State Commission found the rates to be in compliance with the Payphone Orders, and therefore NST compliant, prior to issuing approval. These rates would be protected under state and federal law as complaint.

However, where no revised rates were filed or where rates were found to be in violation refunds should be encouraged. The RBOC violated the payphone orders by failing to comply well into and after the issuance of the waiver order.

In Ohio or any state whereby SBC clearly relied on the Waiver Order, was found to be NST non-compliant and failed to file revised tariffs, they did not fight refunds?

Wrong, SBC has created a smokescreen aimed at avoiding its obligations.

Issue:

On September 20, 1996, the FCC released its report and order on the Telecom Act of 1996, CC Docket No. 96-128, that in part ordered local exchange carriers to provide local access services to payphone providers on a non-discriminatory, cost basis that were compliant with the FCC's New Services Test. On December 19, 1996, the state of Ohio released a supporting order requiring all LEC's operating within Ohio to file revised tariffs within Ohio Docket No. 96-1310 that complied, by January 15, 1997. These revised tariffs were to establish rates that satisfied the requirements of section 276 of CC 96-128, to be effective by April 15, 1997.

The PAO believes that the intent of Section 276 was clear, of greater importance we believe that Ameritech was clear on and understood their obligations as evidenced in a letter of Vitas Cyvas, Ameritech's Director of Regulatory Affairs on May 17, 1997. We believe that rather than attempting to comply as ordered they created a well conceived

smokescreen, that enabled them to ignore their obligations, all while taking affirmative action to justify their eligibility to collect dial around compensation for their payphone operations. Arguably a comedy of errors, but their efforts appear to be a pre-designed effort to violate the April 15, 1997 waiver order, and to sidestep their obligations as ordered in section 276 of CC 96-128, then re-ordered by Ohio Public Utilities Commission as part of Ohio 96-1310. In Ohio SBC has taken liberties with the state commission, manipulated the system, and used deceptive tactics to renege on their written commitments to the FCC that resulted in the Waiver order of April 15th, 1997.

#### Important Facts:

. On September 8, 1996, the FCC released its report and order on the Telecom Act of 1996, CC Docket No. 96-128, that in part ordered local exchange carriers to provide local access services to payphone providers on a non-discriminatory tariffed basis that is compliant under the FCC new services test.

. On December 19, 1996, the state of Ohio released an order requiring all LEC's operating in Ohio to file by January 15, 1997 revised tariff within Ohio Docket No. 96-1310, with revised rates for payphone providers that satisfied the requirements of section 276 of CC 96-128.

. SBC FNA (Ameritech) never filed revised tariffs or attempted to comply with finding 4 of Ohio's December 19, 1996 order issued by the PUCO. They ignored this obligation, and therefore has no argument that the commission approved their revised rates.

. On April 8, 1997, the Payphone Association of Ohio was admitted as a participant in Ohio 96-1310.

. As an alternative to complying as ordered in the existing docket, on May 16, 1997, SBC initiated and used a newly created and unknown docket to file its payphone information and dial around certification to meet certain FCC requirements, that were prerequisite to their eligibility to collect dial around income. Ohio Docket No. 97-545-tp-unc, is a single entry docket that was used in effect to hide SBC's compliance claims, the company began to collect dial around income beginning April 15, 1997.

. The first exhibit attached and in support of the filling within 97-545-tp-unc is a copy of the April 15, 1997 waiver order. SBC's Mr. Vitas Cyvas clearly relied upon it to justify their position with the PUCO.

. On the same date, May 16, 1997, the author of the above mentioned filling, Mr. Vitas Cyvas wrote another letter to the PUCO's telecom division. In that letter Mr. Cyvas clarifies how SBC "must pass the FCC's new services test", that they are relying upon the FCC's waiver order of April 15th, and citing the FCC refund decision further assuring the state Commission that Ameritech Ohio has agreed to issue re-imbursements back through to April 15, 1997 if the rates are revised downward.

. To our knowledge SBC did not produce these Cyvas letters in discovery, nor did they disclose them within Ohio Docket 96-1310. These tactics effectively hid them from Ohio's Commission, and they were not considered. In the body of an order dated June 22, 2000, finding 14, the Ohio Commission states the following:

"The PAO asserts that the Commission's refusal to consider refunds and reimbursements would allow the LEC's to renege on a promise made to the FCC. Certainly, where Ohio law speaks otherwise, the Commission cannot be held to an alleged agreement into which the Commission has not entered".

. In an attempt to avoid the effect of the Waiver Order, and to further renege on their hidden agreement to the PUCO, SBC made the following argument to Ohio's commission:

"Ohio's Commission has no power to order refunds, and that the PAO's reliance on the April 15th order is misplaced. Ameritech contends that the refund provision was limited to a short window, allowing the RBOC's to make rate adjustments to comply with the new services test. There was no intent to create an open ended obligation to award a refund based upon the findings of the Commission. Ameritech contends that the refund provision became moot when Ameritech was found to be in compliance with the FCC's orders. Ameritech believes that the PAO has also confused the issue. Ameritech indicates that the "Commitment" made to the FCC has no relationship to the intra-state tariffed payphone rates being charged to members of the PAO. Further, Ameritech contends that any rate reduction would have to be prospective because Ohio law prohibits retroactive effects. (Ohio 96-1310, entry on rehearing June 22, 2000 finding (8))."

#### Conclusion:

Ohio's Commission has not yet issued a final finding and order in Ohio 96-1310, and there is much controversy regarding the history of the case. However, in Ohio the record speaks for itself, SBC did not file tariffs as ordered within case 96-1310, and the PUCO never issued a waiver of their order or a waiver affirming that SBC's tariffs complied with the FCC mandates. Their dial around certification was hidden in a newly created docket, and is accompanied by a letter whereby they specifically state their pricing obligation and reliance on the waiver order.

All of this effort was needed to assure that SBC could collect the dial around income while ignoring the new services pricing obligations. It would be a tragedy to reward this comedy of errors on the part of the primary malefactor. Fortunately, the body of the act specifically pre-empted state law that interfered with its requirements.

State Commissions were unable to issue a waiver, or certify compliance arbitrarily, nor could they simply ignore the provisions of the act. The RBOC's had the obligation to comply with the payphone orders, it was their responsibility to assure that their rates passed the new services test. States were issued directives on the application of the new services test, data filling requirements and an obligation to investigate and verify that the RBOC's complied.

Protection sought by the LEC's using an agreement that pre-dated the act, implied waivers, unconfirmed State Commission approval or the idea that an RBOC that relied on the Waiver Order is somehow exempt because the State Commission's investigation took too long should be denied.

Clarification and additional penalties are needed to force the RBOC's to comply with the existing payphone orders. If it is proven that a LEC has failed to comply with the payphone orders, and then refused to issue the required re-imbursements within 60 days, their eligibility for dial around should be rescinded, and re-certification should be necessary. Further once rescinded, the RBOC should not be allowed to keep their dial around proceeds for the period of time from April 15, 1997 through the time that re-certify of their compliance is complete. That period should be forfeited.